

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
AMENDED INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Section 122  
Title 14, California Code of Regulations  
Re: Transferability of Commercial Spiny Lobster Fishing Permits

- I. Date of Initial Statement of Reasons: January 7, 2005
- Date of Amended Initial Statement of Reasons: February 9, 2005
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: August 5, 2004  
Location: Bridgeport
- (b) Discussion Hearing: Date: February 4, 2005  
Location: San Diego
- (c) Adoption Hearing: Date: May 5, 2005  
Location: Sacramento
- III. Description of Regulatory Action:
- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:
- State law (Sections 8254 and 8259, Fish and Game Code) authorizes the Commission to set the conditions for issuance of and to limit the number of commercial lobster permits.
- Commission regulations (Section 122, Title 14, CCR) set the conditions for lobster permit issuance. Prior to November 1, 1994, there was no limit on the number of lobster fishing permits that could be issued. Effective that date, no more permits could be issued for the 1994-95 season, and permits for the 1995-96 season could only be issued to those who possessed a valid 1994-95 permit.
- Between November 1994 and July 2003, the regulations were amended four times, first to establish a capacity goal (225 permits) and procedures for the issuance of new permits. In addition, the Commission adopted a comprehensive policy regarding restricted access commercial fisheries in June 1999. Section 6 and Policy 6.1 of that policy address the matter of permit transferability. The proposed regulatory action is in conformance with that policy.

In the last regulatory action regarding permit issuance conditions (calendar 2002-2003, effective July 16, 2003) the Commission repealed the then existing capacity goal (225 permits) and the procedures for the issuance of new permits, pending a complete Department of Fish and Game (Department) and lobster fishing industry review of the fishery, originally scheduled to take place during 2003-04.

The Department, however, has not begun that review as we enter 2005, due primarily to lack of staff and funds, a condition not likely to change in the foreseeable future. The California Lobster & Trap Fishermen's Association (CLTFA) outlined its concerns about this situation in a July 26, 2004 letter to the Commission, and submitted a proposal for regulatory action to provide access into the fishery via transferable permits.

Existing regulation provides that lobster operator permits are not transferable. The proposed amendments would establish criteria to reclassify a portion of the existing permits as transferable, based on degree of prior participation in the fishery. The permit holders who do not fish enough to meet the criteria for a transferable permit will be able to fish for lobster for as long as they renew their permits annually. Through the process of attrition over time the number of non-transferable permits is expected to reach zero.

Once the regulations are in place the Department will review landing records that have been submitted pursuant to sections 8043 and 8046 of the Fish and Game Code and make an initial determination of who meets the qualifications and will notify all permit holders as to that initial determination. The Department would then designate the qualifying permits as transferable. This would provide the qualifying fishermen with the least burdensome means of having their permits designated as transferable.

Anyone notified that he/she does not meet the qualifications would have until March 31, 2006 (the end of the commercial fishing license year) to submit copies of fish landing receipts, issued pursuant to section 8043 of the Fish and Game Code, to demonstrate that he/she does meet the qualifications to have his/her permit designated as transferable.

The CLTFA's initially proposed prior participation level was the harvest of at least 500 pounds of lobster per year in 4 of 5 permit years from "1996-97 thru 2001-02" seasons or 2,000 pounds of lobster in one year from "1997-98 thru 2001-02" season. However, the period "1996-97 thru 2001-02" actually includes 6 permit years, and the period "1997-98 thru 2001-02" includes 5 permit years. The CLTFA's goal was to reestablish an interim "de facto" capacity goal of about 120 transferable permits (equal to the estimated number of transferable permits based on initial discussion with the Department) for the fishery, pending a more complete Department review of the fishery at some later date. This later review

could encompass trap limitations or other methods to reduce effort and catch in the fishery if that was a necessary or desired goal.

The CLTFA clarified that the proposed qualifying window period is the 5 seasons from 1996-97 through 2000-01. The CLTFA further explained that the 1997-98 season was the highest on record in the last 40 years (960,000 pounds) and as such was not a reasonable year to include as the one year with at least 2,000 pounds qualification. Rather than select a different set of years for the single year catch level it was decided to request the Commission consider that the 2,000 pound level of participation be met in 2 of the same 5 years (1996-97 through 2000-01) rather than in just one of those years.

The Department subsequently refined its analysis of past participation and felt that even with the aforementioned qualifying levels there could be as many as 140 transferable permits. Even though this is considerably lower than the now repealed capacity goal of 225 permits the Department asked that a range of qualifying levels that would be more restrictive be included in the regulatory package because of fears that fishermen who enter the fishery by transfer of a permit could fish at a level considerably higher than the level exerted by the former permit holder.

The CLTFA believes that there is a significant learning curve before new fishermen can become as effective as fishermen who have been in the business for 5 or more years, and therefore the fear of significant levels of increased effort is unwarranted.

Even so, and at the Department's request the proposed regulatory action now provides the Commission with a second option (B) of qualification criteria with a range of from 500 pounds up to 80,000 pounds within the time period commencing with the [1996-97 – 2000-01] season and ending with the [2000-01 – 2003-04] season.

Existing regulation establishes deadlines for renewal of lobster operator permits. If a permit is renewed on or before May 31 there is no penalty; if renewed after May 31 and before July 1 a \$50 late penalty is imposed pursuant to Section 7852.2 of the Fish and Game Code, and if a renewal application is submitted after June 30 it is returned unconsidered. Because this section of Title 14 is open for the proposed permit action the Department has asked that these dates all be advanced one month to make them consistent with the renewal deadlines for most other commercial fishing permits thereby reducing confusion for the public about when their permits have to be renewed. The proposed regulations clarify that the penalty assessed is pursuant to 7852.2 of the Fish and Game Code instead of listing the \$50 amount.

In addition, the proposed amendments clarify that renewal applications received by the Department after the new May 31 deadline will be considered forfeited to

the Department. By this means it is expected that at some point in the future the number of non-transferable permits will be reduced to zero by attrition.

Because existing regulations do not provide for the transfer of lobster operator permits there are no permit transfer conditions. The Department is concerned that a relatively large number of fishermen who currently land only a small portion of the annual harvest might transfer their permits to new fishermen as soon as they are able to do so. These new fishermen might then fish with increased effort, compared to those who are willing to transfer (sell) their permits. The CLTFA believes the ability to effectively catch spiny lobster requires several years of practical experience, and therefore the transfer of permits would not likely have an immediate impact on the harvest of lobster.

Even so, and at the Department's request, the proposed regulations now provide the Commission with an option for an initial limit on the number of permits (a range of from 2 to 25) that can be transferred during a license year, until March 31, 2008 to address the Department's concern. This limit would not apply in the case of the death of the permit holder. The department would have three years of restricted transfer rates to determine if there is an increase in fishing effort that might not be sustainable.

To transfer a transferable permit the permit holder or his/her estate would submit a notarized letter identifying the transferee, the original transferable permit, a copy of the transferee's current California commercial fishing license and a non-refundable permit transfer fee of five hundred dollars (\$500) to the Department's License and Revenue Branch in Sacramento. If, on any given day, the number of transfer applications received exceeds the number of available transfers under the initial limit the Department shall hold a drawing to determine which application(s) to process.

**During the public testimony at the February 4, 2005 discussion hearing the question of placing a limit on the number of traps that could be fished by a person who obtains a new permit via the transfer provisions was brought forth as a means to address the Department's concern that new fishermen could fish at a higher level of intensity than the person from whom they obtained their permit.**

**Following the meeting the lobster permit holders in attendance met and voted to propose that a limit of 400 traps be imposed on any person who obtains a new lobster operator permit pursuant to the transfer provisions of the regulations. They felt that 400 traps struck a balance between having enough traps to be reasonably competitive in the fishery, having so small a limit that an individual could not reasonably expect to make a living or having such a high limit that there could be an adverse affect on the resource.**

In the event of the death of a permittee, the permittee's estate would have up to one year from the date of death to transfer the permit and could renew the permit if that action was needed to keep the permit valid.

The Department estimates that it would take about 75 hours (at \$25/hr staff time = \$1,875) to process permit designations and/or transfers, about 75 hours (at \$35/hr staff time = \$2,625) of biological assessment and about 100 hours per year (at \$30/hr staff time = \$3,000) for patrol and investigation. If there were 15 transfers per year a permit transfer fee of \$500 would generate \$7,500 revenue and exactly match those estimated costs.

Existing regulation (Section 122(p), Title 14, CCR) cites the "Daily Lobster Log, DFG 122 (6/95)", found in "Appendix A" (following Chapter 9 of Subdivision 1 of Division 1 of Title 14, CCR) (the actual form in Appendix A has a date of 9/95) as the form to be used for the required record of fishing activities. That form was updated in July 1996 to reduce the required number of pages submitted by fishermen each month. Each page now has room to record up to three days' fishing activity. No changes were made in regards to the information that must be recorded. The Department has asked that the reference be updated and that the log book be incorporated by reference, rather than publishing it in "Appendix A".

Existing regulation provides an appeal process for any person denied a lobster permit. The proposed amendments would extend a similar appeal process to any person denied the designation of his/her lobster operator permit as a transferable lobster operator permit.

Minor, non-substantive changes in punctuation and grammar have been made.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 8254 and 8259, Fish and Game Code.

Reference: Sections 2365, 7852.2, 8043, 8046, 8250-8259, 9002-9006 and 9010, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

Final Statement of Reasons for Regulatory Action, Section 122, Title 14, CCR, re: commercial lobster fishing permits, dated April 16, 2003.

Letter from the California Lobster & Trap Fisherman's Association to the Fish and Game Commission dated July 26, 2004.

California Fish and Game Commission's Restricted Access Commercial Fisheries Policy, Policy 6.1, adopted June 18, 1999.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public discussions were held because the Department did not move to promulgate the regulatory action. The request for this regulatory action came from the California Lobster & Trap Fishermen's Association, whose members will be affected by the adoption of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Reestablish the previous method of issuing new permits, a drawing based on participation requirements and attrition of prior permit holders. This alternative was rejected because it allowed only one new permit for each 10 non-renewed permits and allowed only those persons who had a lobster crewmember permit in the preceding two years to enter the drawing. This alternative was repealed by the Commission in anticipation of these regulations.

(b) No Change Alternative:

The no change alternative would keep the existing regulations in place. There would be no means for anyone to enter the spiny lobster fishery as a new permit holder. There would be no means for existing spiny lobster fishermen to sell their permits along with any boat, traps or other equipment used in harvesting spiny lobster.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. By allowing the free-market transfer of spiny lobster fishing permits the proposed action may provide a positive economic impact through the sale of a complete business package, i.e., a lobster fishing boat, traps and permit. This fishery is limited to southern California, south of Point Conception, Santa Barbara County, so there is no California spiny lobster fishing businesses in other states.

**By establishing a 400 trap limit on persons who obtain a new lobster operator permit via the proposed permit transfer process some new fishermen might not be able to compete as effectively in the spiny lobster fishery. Some existing fishermen fish as few as 200 traps and others fish as many as 800 traps. As the number of permits issued via the transfer process increases over time the degree of disparity in the number of allowable traps will decrease, until at some future time all transferable lobster operator permits will have a limit of 400 traps and no fisherman will have a fishery advantage by virtue of number of traps.**

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed action will not have an immediate impact on the creation or elimination of jobs or businesses in the state. The permits that are designated as transferable will provide for the orderly sale of a complete business package for the harvest of California spiny lobster. The persons whose permits are designated as non-transferable will be able to continue

fishing for California spiny lobster for as long as they chose to do so. The proposed action will not impact the expansion of businesses in California.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.



## **Updated** Informative Digest/Policy Statement Overview

State law (Sections 8254 and 8259, Fish and Game Code) authorizes the Commission to set the conditions for issuance of and to limit the number of commercial lobster permits.

Existing regulations (Section 122, Title 14, California Code of Regulations) set the conditions for issuance and renewal of commercial lobster fishing permits.

Under these regulations all lobster operator permits are non-transferable.

The proposed amendments would create a transferable lobster operator permit and set qualification criteria based on prior participation. The Commission will consider a range of landings from either Option A or Option B, below to have an existing 2005-06 non-transferable permit designated a transferable permit.

Option A: A fisherman would have to have landed a minimum of 500 pounds per year in 4 of 5 years during the window period extending from the 1996-97 through the 2000-01 season or have landed a minimum 2,000 pounds per year in [1 or 2] of the same 5 year window period (1996-97 through 2000-01). All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

Option B: A fisherman would have to have landed a total of [500 to 80,000] pounds within the time period commencing with the [1996-97 – 2000-01] season and ending with the [2000-01 – 2003-04] season. All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

All 2005-06 permits not meeting the qualification criteria would remain non-transferable.

The Department would be charged with making an initial determination as to who meets the qualification criteria and notifying all lobster operator permit holders as to that determination. Any lobster operator permit holders not meeting the qualification criteria based on Department records could submit copies of their own records to show they do meet them. Such copies would have to be submitted on or before March 31, 2006.

Existing regulation sets the deadlines for submission of lobster operator permit renewal applications as May 31 (normal, no penalty fee), June 1-30 (late renewal, \$50 late penalty) and after June 30 (no renewal, permit application returned).

The proposed action would advance those deadlines by one month in each instance, to April 30 (normal), May 1-31 (late) and after May 31 (no renewal) and clarify that any permit not renewed will be considered forfeited to the Department. In addition, the proposed regulations state that the late penalty is determined pursuant to Section 7852.2 of the Fish and Game Code, instead of listing the actual dollar amount.

There are no regulations regarding the transfer of lobster operator permits. The proposed action would set the conditions under which transferable lobster operator permits could be transferred to new fishermen. To transfer a permit the permit holder or his/her estate would have to submit a notarized letter identifying the transferee, the original transferable lobster operator permit, a copy of the transferee's current California commercial fishing license, and a non-refundable \$500 permit transfer fee to the Department's License and Revenue Branch in Sacramento. The new permit would be valid for the remainder, if any, of the then current lobster season and could be renewed as provided.

The Commission will consider if there should be a limit of from 2 to 25 permit transfers per year until March 31, 2008, after which date any number of permits could be transferred, or if there should be no limit on transfers at all. Permit transfer requests would be processed in the order received. If on any given day the number of applications received exceeded the available number of transfers the Department would conduct a drawing to determine which application(s) shall be accepted. This limit would not apply in the case of the death of the permittee. The estate of a deceased permit holder would be able to renew the permit if needed to keep it valid, and would have one year from the date of death of the permit holder, as listed on the death certificate, to transfer the permit.

**The Commission will now also consider if there should be a limit of 400 traps applied to all new lobster operator permits issued via the permit transfer process being proposed in this regulatory package. If approved, when any transferable lobster operator permit is transferred to a new person that permit would be marked by the Department as being valid for not more than 400 traps.**

Existing regulations require fishermen to complete and submit an accurate record of fishing activity on the "Daily Lobster Log, DFG 122 (6/95)", provided by the Department. That form was updated in July 1996 to provide for recording up to three days' fishing activity on one page. No changes were made in the information required on the log. The proposed changes will update the log book reference to "Daily Lobster Log, DFG 122 (7/96)," and make the non-substantive change to incorporate the log by reference rather than print a copy in Title 14.

Any person denied the reclassification of his/her 2005-06 lobster operator permit by the Department would be able to appeal that denial to the Commission within 60 days.

Several non-substantive changes in punctuation and grammar have been made for clarity throughout the regulatory text.